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6/22/03

PATENT
Customer No. 22,852
Attorney Docket No.: 03806.0536

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
	)	
Marie-Christine BISSERY	)	Group Art Unit: 1614
	)	
Application No.: 10/092,508	)	Examiner: F. Krass
	)	
Filed: March 8, 2002	)	
	)	
For: A COMBINATION COMPRISING COMBRETASTATIN AND ANTICANCER AGENTS	)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

In response to the Office Action dated May 23, 2003, Applicant respectfully requests reconsideration of the subject application in light of the following remarks. In the Office Action, the Office required the election of a single disclosed species of: 1) a stilbene derivative and 2) anticancer agents.

The election requirement is respectfully traversed. However, to be fully responsive, Applicant elects, with traverse, the 1) stilbene derivative of formula (IIA), which reads on claims 3-9, and 2) doxorubicin, which reads on claims 3 and 5.

Applicant respectfully submits that she has a statutory right under 35 U.S.C. § 112, second paragraph, to claim the subject matter she regards as her invention as she chooses. Issuing a restriction requirement within a claim, such as a particular stilbene derivative and a particular anticancer agent, with the idea that Applicant would

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have to carve up that claim and pursue the nonelected subject matter in a separate application violates this right under Section 112. Indeed, the C.C.P.A. has characterized such action as tantamount to a refusal to examine. See, In re Weber, 198 U.S.P.Q. 328 (C.C.P.A. 1978); In re Haas, 198 U.S.P.Q. 334 (C.C.P.A. 1978).

35 U.S.C. § 121 gives the Office authority to promulgate rules designed to restrict an application to one of several claimed inventions when those inventions are found to be independent and distinct. 35 U.S.C. § 121, however, does not give the Office authority to reject a particular claim on that basis. Weber at 332.

Thus, in order to avoid unnecessary delay and expense to Applicant and duplicative examination by the Patent Office, the election of species requirement should be withdrawn.

Finally, Applicant respectfully requests that all the claimed species continue to be examined in this application. If the Office chooses to maintain the election of species requirement, Applicant expects the Office, if the elected species are found allowable, to continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a reasonable number of the nonelected species, as is the duty according to M.P.E.P. § 803.02 and 35 U.S.C. § 121.

In view of the foregoing remarks, Applicant respectfully submits that the election of species requirement is in error and requests that the requirement be withdrawn.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

Dated: June 16, 2003

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